IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No.6135 of 1998

Between:

The Depot Manager, APSRTC, Mahaboobnagar.

..... PETITIONER

AND

1 The Labour Court-III, Hyderabad rep. by its Presiding Officer
2 Sri R.M. Madhukumar,
R/o 1-2-59/2, Krishna Colony, MAHABOOBNAGAR.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction particularly one in the nature of Writ of certiorari and call for the records relating to an in connection with the award Dt. 26-7-97 passed in ID No: 197/96 on the file of the Respondent No:1 which was published in the Gazette vide G.O.Rt.No.8 Dt.3-1-98 and quash the same as illegal, arbitrary and contrary to well established principles of law.

Counsel for the Petitioner: Mr. A.V.SIVAIAH

Counsel for the Respondent No.1: G.P. for Labour

Counsel for the Respondent No.2 : Mr.P.SRIDHAR RAO

The Court made the following :

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ORAL ORDER:

This writ petition is filed by the Management-A.P.State Road Transport Corporation being aggrieved by the Award dated 25-7-1997 passed in I.D.No.197 of 1995 on the file of Labour Court-III, Hyderabad.

Respondent No.2 while conducting the bus bearing Registration No.5351 on the route Marikal to Mahaboobnagar at about 1315 hours, a check was exercised by the checking officials of the Corporation and found certain cash and ticket irregularities. In pursuance of that, charge memo dated 27-8-1993 was issued enumerating the following charges:

> "(i) For having reissued eight tickets bearing Nos.070/143337, 339, 340, 345, 349, 350 and 353 and 356 to eight passengers (in 11-50 hrs. trip) who boarded the bus at Nawabpet and bound for Mahaboobnagar, Ex-stages 5 to 1 which were already issued and accounted in the SR earlier in 9-30 Hrs. and 10-30 Hrs. trip for the journey from stage No.5 to stage No.1 (6 six tickets) and from stage No.1 to stage No.5 (12 tickets) i.e. MBNR to Nawabpet) respectively which constitutes misconduct under Reg.28(xxii) and (xxxii) of APSRTC Employees (Conduct) Regulations,1963.
>
> (ii) For having failed to close the SR of all dens. against stage No.3 (in 11-50 Hrs. trip) after completing the above ticket issues, which constitutes misconduct under Reg.28(xxxi) and(xxxii) of APSRTC Employees (Conduct) Reg.1963."

After considering the explanation submitted by the petitioner and after conducting a detailed enquiry into the matter, by Proceedings dated 27-12-1993 of the writ petitioner, the 2nd respondent was removed from service. Aggrieved by the same, he filed an appeal before the appellate authority under the Regulations. The same was rejected on 9-5-1994. Further, the review petition filed by the 2nd respondent was also rejected on 20-6-1994. Thereafter, the 2nd respondent raised an Industrial Dispute under Section 2-A(2) of the Industrial Disputes Act,1947 being I.D.No.197 of 1995 on the file of the Labour Court-III, Hyderabad. The Labour Court held that the removal order passed by the writ petitioner as confirmed by the appellate and

reviewing authorities is liable to be set aside and the 2nd respondent was entitled for reinstatement into service with all benefits like continuity of service, but with 50% of back wages. Aggrieved by the said Award, the present writ petition is filed by the management.

Heard both sides.

I have gone through the Award passed by the Labour Court. I am of the view that the Labour Court has not properly appreciated the misconduct alleged against the 2nd respondent-workman and the proportionality of the punishment inflicted thereto. The charges, as seen from above, are very serious in nature. The 2nd respondent-workman issued 8 (eight) tickets, which were already issued in the earlier trip and accounted in the SR at 930 hours and 1030 hours. Further, he had closed the SR of all denominations against stage No.3 after completing the issuance of the above tickets. This misconduct was found to be proved in the domestic enquiry conducted by the petitioner-management and the same was confirmed in the appeal and also in the review. Labour Court has not given any reasons as to why there was no misconduct in reissuance of 8 tickets and closure of SR for all denominations against stage No.3. The Labour Court found as follows:

> "The plea of the petitioner to the above allegations pleaded in the explanation that the said passengers in question have travelled in the service of earlier trip and that the petitioner issued the said tickets to them, but they have also again boarded the bus in the trip in question and that when the petitioner approached and asked the passengers whereabout the tickets, they cheated him saying that they had already purchased the tickets and there are number of pass holder passengers. The said plea was not accepted by the E.O. as well as by respondent. Thereafter, careful consideration of the case and circumstances the documents such as enquiry proceedings, the impugned removal order, this Court finds that the E.O. of the respondent have rightly refused to accept the explanation and the defence plea of the petitioner as such the findings of the Enquiry Officer become unreasonable….."

However, the Labour Court proceeded to hold that with regard to quantum of punishment, it is deemed fit not to accept and justify the removal order, since the conduct of the workman does not warrant to impute *mala fides* on the part of the workman in misappropriation of money and as such, the punishment of removal from service is excessive. It had also placed reliance on the reported Judgment in **THE MILK PRODUCT FACTORY, AP.DAIRY DEVELOPMENT CORPORATION LTD., VIJAYAWADA v. V.K. DURGA RAO** and proceeded to hold that the removal order is liable to be set aside and workman was entitled to get reinstatement, continuity of service and 50% of back wages. I am of the considered opinion that once the Labour

Court comes to the conclusion that the enquiry conducted was proper and the reasons furnished are tenable, even if it comes to the conclusion that the punishment imposed was disproportionate to that of the misconduct, it was not correct in extending the benefit of 50% of back wages and other attendant benefits. Reissuing of tickets is a pre-meditated act i.e. issuing of tickets, which were already issued in the earlier trip and fare was collected. This is a dubious method adopted by the workman to deprive the revenues of the management. This can never be taken leniently. I am of the view that the Labour Court while exercising its powers under Section 11-A of the Industrial Disputes Act,1947 has acted in excess of its jurisdiction and granted relief more than what is deserved by the workman, even if it had taken a lenient view of the matter. Therefore, the Award of the Labour Court insofar as granting of 50% of back wages and other attendants was concerned, is uncalled for in a case like this. Hence, the Award of the Labour Court is liable to be modified and is to be read as under:

> "removal order passed by the management is set aside. The workman is entitled for fresh appointment. He is not entitled for any back wages, continuity of service and other attendant benefits"

It is made clear that the petitioner-management is at liberty to recover the amounts already paid to the respondent-workman pursuant to the interim orders passed by this Court.

The Writ Petition is allowed to the extent indicated above. There shall be no order as to costs.

10-9-2004

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Friday, Tenth day of September Two thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Presiding Officer, Labour Court-III, Hyderabad.
2. 2CCs to G.P. for Labour, High Court Buildings, Hyderabad (OUT)

3. 2CD copies.

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